

**CAQ SEC Regulations Committee**  
**September 25, 2012 - Joint Meeting with SEC Staff**  
**SEC Offices – Washington DC**

**HIGHLIGHTS**

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In addition, these highlights are not authoritative positions or interpretations issued by the SEC or its staff. The highlights were not transcribed by the SEC and have not been considered or acted upon by the SEC or its staff. Accordingly, these highlights do not constitute an official statement of the views of the Commission or of the staff of the Commission.

As available on this website, Highlights of Joint Meetings of the SEC Regulations Committee and its International Practices Task Force (IPTF) and the SEC staff are not updated for the subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature. As a result, the information, commentary or guidance contained herein may not be current or accurate and the CAQ is under no obligation to update such information. Readers are therefore urged to refer to current authoritative or source material.

**I. ATTENDANCE**

**A. SEC Regulations Committee**

Melanie Dolan, Chair  
Steve Meisel, Vice Chair  
Jim Brendel  
Jack Ciesielski  
Brad Davidson  
Christine Davine  
Jack Day  
Tom Elder  
Bridgette Hodges

Chris Holmes  
Wayne Landsman  
Jeff Lenz  
Kevin McBride  
Sandra Peters  
Scott Pohlman  
Michelle Stillman

**B. Securities and Exchange Commission**

*Division of Corporation Finance (Division)*

Craig Olinger, Acting Chief Accountant  
Mark Kronforst, Associate Director  
Nili Shah, Deputy Chief Accountant  
Angela Crane, Associate Chief Accountant  
Tamara Brightwell, Senior Special Counsel  
Jill Davis, Associate Chief Accountant  
John Fieldsend, Special Counsel  
Todd Hardiman, Associate Chief Accountant  
Heather Maples, Senior Special Counsel  
Ryan Milne, Associate Chief Accountant  
Kyle Moffatt, Associate Chief Accountant  
Mark Shannon, Associate Chief Accountant  
Mark Green, Senior Special Counsel

**C. Center for Audit Quality**

Annette Schumacher Barr

**D. Guests**

Rob Skubic, KPMG  
John May, PwC

**II. DIVISION OF CORPORATION FINANCE PERSONNEL AND ORGANIZATIONAL UPDATE**

Craig Olinger indicated that there had not been any notable personnel or organizational changes in the Division of Corporation Finance since the last SEC Regulations Committee meeting in June 2012.

### III. CURRENT FINANCIAL REPORTING MATTERS

#### A. Fair Value Disclosures

Mark Shannon shared observations related to fair value disclosures resulting from the SEC staff's recent filing reviews. Mr. Shannon indicated that the SEC staff had observations in three general areas related to fair value disclosures and the application of [ASU 2011-04, Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS](#).

- First, the SEC staff noted that it observed instances in which the disclosures of the significant inputs used in fair value measurements included ranges that were wide. In certain of those instances, the SEC staff inquired 1) whether the wide ranges were meaningful to investors and 2) whether disclosure of weighted averages as contemplated in ASU 2011-04 would have provided more meaningful information.
- The SEC staff's second observation related to the use of multiple valuation techniques to measure fair value. Mr. Shannon noted that in certain instances, it might be appropriate for a registrant to disclose the population valued under each valuation method.
- Finally, Mr. Shannon indicated that the SEC staff had observed that certain qualitative disclosures about sensitivity analyses and other assumptions and inputs used in fair value measurements could be more transparent to enhance meaningfulness to investors. For example, certain registrants disclosed that sensitivity analyses were performed and that changes in inputs would impact fair values; however, the SEC staff questioned the usefulness of certain disclosures because they did not provide sufficient insight into the nature of the sensitivity analyses performed or the directional impact to fair values of changing specific significant unobservable inputs.

### IV. IFRS WORK PLAN

The SEC's Final Staff Report titled, "[Work Plan for the Consideration of Incorporating International Financial Reporting Standards into the Financial Reporting System for U.S. Issuers](#)" was issued on July 13, 2012. The report summarizes the efforts and findings but did not provide any recommendations for actions by the Commission.

Craig Olinger indicated that the SEC staff does not have any plans to undertake further actions in response to the IFRS Work Plan. However, Mr. Olinger noted that many registrants in Canada recently completed (or are in the process of completing) their initial adoptions of IFRS, and the SEC staff will perform its filing reviews of Canadian registrants in the ordinary course. Mr. Olinger noted that Canadian reporting requirements have many similarities with U.S.

requirements, so the reviews may provide the SEC staff with additional insight about the adoption of IFRS. Mr. Olinger confirmed that the SEC staff's review approach toward companies that apply IFRS has not changed.

Mr. Olinger noted that the SEC staff will consider whether any information obtained from the IFRS filing review process may be relevant to the Commission's broader consideration about the further incorporation of IFRS into the financial reporting system in the U.S.

## **V. CAPITAL FORMATION INITIATIVES**

### **A. JOBS Act**

In April, the Jumpstart Our Business Startups Act (JOBS Act) was signed into law to encourage smaller companies to raise capital in the United States. The JOBS Act, which is discussed in more detail below, created a new category of public issuers called Emerging Growth Companies (EGC). Generally, an EGC is a company with annual revenues less than \$1 billion and, following an initial public offering, less than \$700 million in public float. Readers should refer to the JOBS Act itself for the complete definition of an EGC.

Nili Shah indicated that the SEC staff expects to publish additional [Frequently Asked Questions \(FAQs\)](#) designed to provide further guidance about how to implement certain provisions of the JOBS Act. The FAQs will be included on the JOBS Act section of the SEC's web site.

Ms. Shah indicated that many of the recent questions received by the SEC staff surrounding the JOBS Act related to specific fact patterns that do not appear applicable to a broader audience. Ms. Shah encouraged registrants to contact the SEC staff with specific questions that are not addressed in the FAQs.

*[Note: On September 28, 2012, the SEC staff issued an additional set of FAQs which can be found on the SEC website at <http://sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm>.]*

### **B. Recommendations by the SEC Advisory Committee on Small and Emerging Businesses**

Ms. Shah indicated that at the most recent meeting on September 7, the Advisory Committee focused on (i) market structure issues, particularly decimalization / "tick" size and its impact on the IPO market and (ii) scaling of disclosure requirements and corporate governance rules for smaller public companies. Ms. Shah indicated that at the [September 7<sup>th</sup> meeting](#), the Advisory Committee heard presentations on these topics.

Ms. Shah also indicated that the Advisory Committee is expected to formulate its recommendations on these issues soon. The Committee also discussed extending benefits available to EGCs under Title I of the JOBS Act to a broader group of issuers – particularly smaller public companies that cannot qualify as EGCs because they are already public.

### **C. Confidential Reviews of Initial Registration Statements**

Under the JOBS Act, an EGC may confidentially submit certain draft Securities Act registration statements to the SEC staff for confidential review. The Committee and the SEC staff discussed the following two matters related to confidential submissions.

- **Auditors' Consents**

The Committee noted limited instances in which registrants had received comments from the SEC staff on their confidential submissions requesting an auditors' consent to be included in the confidential submission. The Committee asked the Staff whether there had been a change in the staff's view previously communicated in Questions 7 and 10 from the [FAQs on Confidential Submission Process for EGCs](#) (posted to SEC's JOBS Act site on April 10, 2012), which indicate confidential submissions of draft registration statements are not required to include the consent of auditors. Ms. Shah indicated that there had not been any change in the staff's point of view and that the guidance in Questions 7 and 10 is applicable.

- **Named Underwriters**

The SEC staff indicated that its approach to reviewing confidential submissions of registration statements that do not include a named underwriter is similar to its approach for reviewing filed registration statements that do not include a named underwriter. In general, if an underwriter is not included in the first amendment of the confidentially-submitted registration statement, the SEC staff will likely defer reviewing the submission until an underwriter is named.

## **VI. SEC STAFF AND OTHER INITIATIVES**

### **A. Financial Reporting Manual**

Ms. Shah noted that the next update to the Division's [Financial Reporting Manual \(FRM\)](#) is expected to be issued soon, with updates dated as of June 30, 2012.

*[Note: On October 4, 2012, the Division's staff issued its quarterly update of the FRM.]*

## **B. Rulemaking for Conflict Minerals and Extractive Industry Payments**

On August 22, the SEC adopted two rules mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. One rule requires certain companies to disclose their use of conflict minerals (e.g., tantalum, tin, gold and tungsten) that originated in the Democratic Republic of the Congo or an adjoining country (“covered countries”). The other rule requires domestic and foreign resource extraction issuers to disclose certain payments made by the issuer, a subsidiary, or another entity controlled by the issuer, to the U.S. government or foreign governments in certain cases.

John Fieldsend and Tamara Brightwell provided summaries of these new rules. They indicated that extensive analyses of the costs and benefits of implementing and complying with these rules had been undertaken and included in the releases. The quantitative assessment of the economic effects of these rulemakings focused on the costs of complying with the rules because the benefits (e.g., the benefits to the humanitarian efforts in the covered countries) are inherently difficult to quantify.

They indicated that the SEC staff is currently accepting inquiries about the implementation of and compliance with the rules. Based on the nature and extent of the inquiries received, the SEC staff will consider the best way to disseminate information, including the possible publication of implementation guidance.

## **VII. XBRL**

### **A. SEC Request for Comment on Interactive Data**

On August 6, the SEC published a [Request for Comment](#) in the Federal Register about the requirement to submit XBRL. Mark Green informed the Committee that the Request for Comment was issued as part of the SEC’s normal recurring process to seek an extension from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). Under the provisions of the PRA, every three years the SEC typically must seek and be granted an extension by the OMB of its previous approval of the burden imposed by rules and regulations that are subject to the PRA. The rules requiring XBRL submissions were initially adopted and their burden approved by the OMB in 2009. As part of the routine process for obtaining an extension of this approval from the OMB in 2012, the SEC issued the Request for Comment.

Mr. Green noted that as part of the process to obtain an extension from the OMB under the PRA, the SEC staff considers all comments received. Mr. Green further indicated that to date, only one comment letter had been received and it questioned the benefit of the XBRL requirements for smaller

public companies and the users of their financial statements. The comment period ends on October 5, 2012.

## **VIII. OTHER DEVELOPMENTS**

### **A. Iran Threat Reduction and Syria Human Rights Act**

On August 10, President Obama signed into law the [Iran Threat Reduction and Syria Human Rights Act of 2012](#) (the Act). In addition to expanding sanctions with respect to Iran, Section 219 of the Act adds new Section 13(r) to the Exchange Act. Section 13(r) requires reporting companies to provide quarterly and annual disclosures of their or their affiliates' engagement in certain business activities relating to Iran. Heather Maples indicated that the transactions and activities required to be disclosed include matters such as supporting terrorist activities, involvement in the development of weapons of mass destruction, activities that facilitate Iran's development, production and exportation of petroleum, and any transaction with the government of Iran that is not specifically authorized by a federal department or agency. Reporting companies that have engaged, or whose affiliates have engaged, in any activity specified in Section 13(r) will be required to disclose (i) the nature and extent of the activity, (ii) the gross revenues and net profits attributable to the activity, and (iii) whether the reporting company or its affiliate intends to continue the activity. The law was self-executing, meaning that the disclosure requirements become operative without the need for additional rulemaking. Reporting companies that are required to disclose Iran-related business activities under Section 13(r) must also file a notice that they have provided such disclosure with the SEC. Ms. Maples indicated that the SEC staff plans to issue guidance to reporting companies on how to comply with the notice filing requirements of Section 13(r).

The first disclosures under the law will be expected in interim and annual reports that are required to be filed after February 6, 2013 (e.g., 2012 annual reports for calendar year companies). A question was raised at the meeting as to whether Section 13(r) disclosures would be required in a report due after February 6 if the reporting company files the report prior to that date. The staff indicated that it will consider this question.

## **IX. CURRENT PRACTICE ISSUES**

### **A. Contractual Obligations Table Presentation**

In light of some recent staff comments on this topic, the Committee and the SEC staff discussed the presentation of certain items (i.e., interest payments, unrecognized tax benefits and expected payments or contributions related to pension or OPEB plans) in the Contractual Obligations Table.

Prior to the issuance of an [Interpretive Release \(FR-83\)](#) in 2010, the FRM expressed a view that each of these three items should be included in the table (prior Sections 9240.4, 9240.6.d and 9240.e). FR-83 acknowledged diversity in how these items had historically been presented in the table and did not express a view regarding the presentation:

“Since the adoption of Item 303(a)(5), registrants and industry groups have raised questions to our staff about how to treat a number of items under the contractual obligations requirement, including: interest payments, repurchase agreements, tax liabilities, synthetic leases, and obligations that arise under off-balance sheet arrangements. In addition, a variety of questions has been raised with our staff in the context of purchase obligations. Because the questions that arise tend to be fact-specific and closely related to a registrant’s particular business and circumstances, we have not issued general guidance as to how to treat these items or other questions regarding the presentation of the contractual obligations table.”

The staff confirmed that prior FRM Sections 9240.4, 9240.6.d and 9240.e no longer apply. However, the SEC staff noted that FR-83 also indicates that if uncertainties exist as to the timing or amounts of contractual obligations such that the amounts are excluded from the table, footnotes to the table should be used to describe the nature and extent of these obligations and elaborate on which contractual obligations are included in the table and which are not.

After the issuance of FR-83, the guidance referenced above was removed from the FRM. Consistent with the guidance in FR-83 and the change to the FRM, the SEC staff believes that the extent to which each of these items (i.e., interest payments, unrecognized tax benefits and expected payments or contributions related to pension or OPEB plans) should be included in the Contractual Obligations Table is a matter of judgment based on the specific facts and circumstances of each registrant.

For example, if a registrant’s interest payments relate entirely to fixed rate debt obligations for which the amount and timing of interest payments are known, the SEC staff would expect those interest payments to be reflected in the table (rather than a footnote). On the other hand, if a registrant’s interest payments relate to variable rate obligations for which the timing and amounts are uncertain, it may be appropriate to discuss those obligations in a footnote rather than include the amounts in the table.